

REMARKS

Applicants submit this Amendment in response to the Office Action of September 28, 2004, and following the interview with the Examiner on November 11, 2004. The claims have been amended as follows. The amendments to the claims were discussed and agreed to during the interview.

Independent claim 24 and 33 have been amended to call for a concentration of BCD of 0.5% or higher and physically stable for one week at 5°C. Independent claim 40 has been amended to call for a concentration of BCD of 0.5% or higher and a concentration of niacin or niacinamide of about 1.0% or higher. Independent claims 45, 63, and 74 have been amended to call for a concentration of metronidazole of about 1.0% or higher, a concentration of BCD of about 0.5% or higher, and of niacin or niacinamide of about 0.5% or higher. Independent claim 82 has been amended to call for metronidazole and for betacyclodextrin at a concentration of 0.5% or higher. Independent claim 89 has been amended to call for metronidazole.

REJECTIONS OF THE CLAIMS

I. Rejection under 35 U.S.C. §102(b)

The Examiner has rejected claims 82-84, 89 and 90 as being anticipated by Struengmann et al, WO 99/09988. It was agreed at the interview that the amendment of claims 82 and 89 overcome this ground of rejection. Accordingly, the Examiner is requested to withdraw the rejection of these claims on this ground.

II. Rejections under 35 U.S.C. §103

- A. Kata, Acta Pharm. Hung, 54:116-122 (1984), and Chien, U.S. Patent No. 4,032,645

The Examiner has rejected claims 24, 27-29, 31, 32, 40, 41, 43-51, 56-58, 63, 65-68, 71-74, 76-78, 80-82, 85, and 86 as being obvious over Kata and Chien. It was agreed at the interview that the amendment of claims 24, 40, 45, 63, 74, and 82 overcome this ground of rejection. Accordingly, the Examiner is requested to withdraw the rejection of these claims on this ground.

- B. Kata, Acta Pharm. Hung, 54:116-122 (1984), Chien, U.S. Patent No. 4,032,645, and Czernielsewski, U.S. Patent No. 5,849,776

The Examiner has rejected claims 24, 26-51, 56-68, 70-74, and 76-78, 80-82, 85, 86, and 88 as being obvious over Kata and Chien in view of Czernielsewski, U.S. Patent No. 5,849,776. It was agreed at the interview that the amendment of claims 24, 33, 40, 45, 63, 74, and 82 overcome this ground of rejection. Accordingly, the Examiner is requested to withdraw the rejection of these claims on this ground.

- C. Kata, Acta Pharm. Hung, 54:116-122 (1984), Chien, U.S. Patent No. 4,032,645, and Loftsson, U.S. Patent No. 5,324,718

The Examiner has rejected claims 24, 25, 27-29, 31, 32, 40, 41, 43-51, 56-58, 63, 65-69, 71-74, 76-78, 80-82, 85, and 86 as being obvious in view of the combined disclosure of Kata, Chien, and Loftsson, U.S. Patent No. 5,324,718. It was agreed at the interview that the

amendment of claims 24, 40, 45, 63, 74, and 82 overcome this ground of rejection. Accordingly, the Examiner is requested to withdraw the rejection of these claims on this ground.

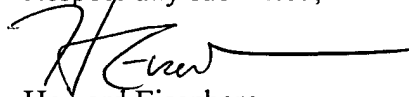
D. Struengmann et al, WO 99/09988

The Examiner has rejected claims 82-84, and 88-91 as being obvious in view of Struengmann et al, WO 99/09988. It was agreed at the interview that the amendment of claims 82 and 89 overcome this ground of rejection. Accordingly, the Examiner is requested to withdraw the rejection of these claims on this ground.

CONCLUSION

Applicants submit that the claims are in condition for allowance. The Examiner is requested to withdraw all present grounds for rejection of the claims and to promptly issue a notice of allowance. If any outstanding issues remain that would preclude an allowance of all pending claims, the Examiner is requested to telephone the undersigned attorney to determine if such issues may be resolved in a telephone discussion.

Respectfully submitted,

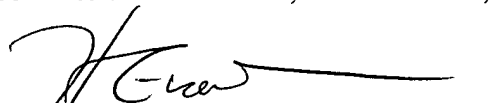


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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on November 16, 2004.

Dated: 11/16/2004


Howard M. Eisenberg